

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Wireless E911 Location Accuracy
Requirements

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PS Docket No. 07-114

**BRISTOL BAY CELLULAR PARTNERSHIP
PETITION FOR TEMPORARY WAIVER**

Bristol Bay Cellular Partnership (“Bristol Bay”), by its attorney and pursuant to Sections 1.3 and 1.925 of the Commission’s Rules¹ and the Commission’s *Fourth Report and Order*,² hereby seeks a waiver of Section 20.18(i) of the “Indoor location accuracy for 911” Rules. Bristol Bay requests that the Commission waive the location accuracy requirements and associated reporting requirements of Section 20.18(i). Bristol Bay’s service area includes no Public Safety Answering Points (“PSAPs”) that are capable of receiving or using indoor location data or Phase II Enhanced 911 (“E911”) location data. Accordingly, Bristol Bay requests a temporary waiver of the Commission’s indoor accuracy provisions and reporting rules up to and until a PSAP served by Bristol Bay is capable of receiving and using Phase II E911 and indoor location data.

¹ 47 C.F. R. §§ 1.3 and 1.925.

² *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259, at ¶ 157 (2015) (discussing the applicable waiver standards) (“*Fourth Report and Order*”).

Background

Bristol Bay is a small telecommunications carrier providing wireless services to a few hundred subscribers in rural Alaska. Bristol Bay is managed and controlled by Bristol Bay Telephone Cooperative, which is owned by its subscriber members. Based in King Salmon, Alaska, Bristol Bay serves a population of about 4,456 per 2010 Census. Bristol Bay's service area consists of small, isolated communities with few connecting roads.

PSAPs are designated by the Alaska Governor's Office. No official PSAPs have been designated in Bristol Bay's service area. In communities such as Igiugig, Levelock, New Stuyahok, Ekwok, Koliganik, and Clarks Point, where no PSAP authority has been designated, 911 calls are routed to numbers provided by the Governor's Office. If the 911 call is answered, the caller might be assisted by a state trooper serving the community for law enforcement. Some 911 calls are routed to Dillingham City or the Bristol Bay Borough Police Department because they have twenty-four hour answering capabilities. Locations in unorganized portions of the service area are not typically provisioned with fire or emergency medical care. Remote areas unconnected to the road system have virtually no emergency service.

Temporary Waiver of the Indoor Location Rules Is Warranted and in the Public Interest

Bristol Bay requests waiver of the rules of the Federal Communications Commission (FCC or Commission) requiring Commercial Mobile Radio Service (CMRS) providers to deliver to Public Answering Safety Points (PSAPs) 911 callers' dispatchable location or x/y location within a prescribed number of meters for a prescribed percentage of 911 calls by dates set forth in FCC Rule § 20.18(i), 47 C.F.R. § 20.18(i).

Bristol Bay also requests waiver of associated requirements to submit to the FCC live 911 call data reports, indoor location accuracy certifications, implementation plans and progress reports required by FCC Rule § 20.18(i)(3)(ii)(E), § 20.18(i)(3)(iii), § 20.18(i)(4)(i) and § 20.18(i)(4)(ii), respectively.

Bristol Bay has no choice but to request waiver of the 911 call location obligations of Section 20.18(i). Bristol Bay has no E911 capable PSAP partner, yet the obligations are not predicated on participation by an E911 capable PSAP. The version of Section 20.18(a) released with the *Fourth Report and Order* did, actually, exclude from 20.18(i) obligations CMRS providers with no E911 capable PSAPs. The *Erratum* took away the exception, and the rules published in the Federal Register matched the *Erratum*.

In the *Erratum*, at item 6, the limitation of 911 accuracy rules (to the extent the PSAP has requested and uses data) was changed to apply only to paragraphs (d) through (h)(2) and to paragraph (j) of Section 20.18. Paragraphs (d) through (h)(2) address Phase I (call back number and call site) and Phase II (locating outdoor 911 calls). Paragraph (j) covers delivery of confidence and uncertainty (c/u) data. Consequently the non-capable PSAP exception was changed by the *Erratum* to apply only to Phase I, to Phase II outdoor rules, and to c/u requirements. Left missing from the non-capable PSAP exception was paragraph (i) – Indoor location accuracy for 911 and testing requirements. This change made it impossible for Bristol Bay to comply with Section 20.18(i).

Bristol Bay must request a waiver of Section 20.18(i) because no PSAP in Bristol Bay's wireless service area is capable of receiving or utilizing 911 location data. No PSAP has asked Bristol Bay to provide outdoor or indoor 911 call location data. Therefore Bristol Bay requests

relief from requirements to deliver indoor location data, test and report live 911 call data, certify location accuracy, file implementation plans, or file progress reports.

Bristol Bay Will Deliver Location Data upon Request from a Capable PSAP

Bristol Bay has solicited from 911 technical experts proposals for development of plans to implement E911 location services when a PSAP capable of receiving, processing and utilizing the data requests such services. Bristol Bay's projected cost of developing a plan is about \$40,000. Expending scarce resources for delivery of accurate location data to non-capable PSAPs is irrational. However, when a capable PSAP requests location data, Bristol Bay is prepared to commence a study. Bristol Bay projects that a system likely can be designed in about eight weeks.

Following the design process, Bristol Bay would install the E911 call location system, then test and deploy with the requesting PSAP. Bristol Bay would spend about \$60,000 for set-up and \$130 per month per tower, plus costs for trunks, testing and maintenance. To comply with FCC reporting rules, Bristol Bay would need to purchase Location Performance Management tools at a cost of about \$1,500 for set-up, \$150 per tower and \$11 per tower per month (for 36 months). This activity and expenditure is futile without a valid request for the services from a capable PSAP.

Bristol Bay's Request Meets the Standard for Waiver

The Commission may waive its rules based upon a showing of good cause.³ It may exercise discretion to waive a rule where particular facts would make strict compliance with the rule inconsistent with the public interest.⁴ The Commission may take into consideration, on a case-by-

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*") (citing *WAIT Radio*, 418 F.2d at 1159).

case basis, factors involving equity, hardship, or more effective implementation of overall policy.⁵ “Waiver of the Commission’s rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”⁶ The Commission’s authority to waive its rules resembles an obligation, in that it is a *sine quo non* to its ability to adopt otherwise inflexible rules.⁷ This waiver authority is a necessary “safety valve” that makes the system work.⁸

Bristol Bay satisfies the Commission’s waiver criteria. Good cause exists to relieve Bristol Bay from compliance with Rule Section 20.18(i) in light of the circumstances. No PSAP in Bristol Bay’s service area has either requested or become capable of receiving and utilizing 911 call location data. This environment nullifies the objectives of Section 20.18(i).

The Commission recognizes the public interest in granting a waiver when “special circumstances particular to smaller carriers may warrant limited relief from 911 requirements.”⁹ Circumstances such as “financial constraints, small and/or widely dispersed customer bases, and

⁵ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

⁶ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Advantage Cellular Systems, Inc. Petition for Waiver of the FCC’s Universal Service Rules*, CC Docket No. 96-45, Order on Reconsideration, 31 FCC Rcd 3753, 3754 (para. 5 n.12) (2016) (citing *Northeast Cellular*, 897 F.2d at 1166).

⁷ U.S. Cellular, *Petition for Limited Waiver and Request for Extension of Dates for Compliance with Mobility Fund Phase I Public Interest Obligations*, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2016) (“U.S. Cellular Petition”), at 12.

⁸ *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”), *cited in* Smith Bagley, Inc., *Petition for Waiver, Expedited Action Requested*, AU Docket No. 14-78 (filed Aug. 8, 2014), at 4.

⁹ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, Order, 22 FCC Rcd 8927, at ¶ 7 (2007).

large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains)” are pertinent and in play for Bristol Bay.¹⁰ Compliance costs of well over \$100,000 would be wasted by Bristol Bay, a small carrier serving exceedingly remote, mountainous terrain and bodies of water where no PSAP can receive or use the location data. Likewise, Bristol Bay would bear undue burden devoting time and expense to periodically reporting to the Commission and public safety organizations E911 call activity and location accuracy that does not exist because no PSAP can use the data.

The public interest will be served by granting the requested temporary waiver so that Bristol Bay can productively allocate attention to providing wireless services to customers in its rugged, remote and sparsely populated service area. Even in places with only a couple of users on the wireless network, Bristol Bay can continue to provide wireless service rather than devote scarce resources to collect, deliver or report unused location data.

Until the time comes when a PSAP provides Bristol Bay with a valid request for 911 call location data, and such PSAP is funded and can receive and utilize the data, a temporary waiver of Section 20.18(i) obligations is appropriate, necessary and in keeping with Section 1.925(b)(3) of FCC Rules. A waiver may be granted in Wireless Radio Services Applications and Proceedings when:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.925(b)(3).

Enforcing Section 20.18(i) obligations on Bristol Bay would not serve the purpose of locating 911 callers. Rather, it would trigger an inequitable waste of resources better spent on providing wireless service in remote areas. Bristol Bay has no reasonable alternative but to ask for temporary waiver of 911 call location data collection, delivery and reporting requirements.

No PSAPs will be disadvantaged by grant of Bristol Bay's request. Local public safety officials may follow their own path toward achieving 911 call location capabilities. When a PSAP is ready, Bristol Bay will be able to implement a solution for delivery of the data. PSAPs may request FCC enforcement of Section 20.18(i) if they "have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP."¹² Grant of Bristol Bay's waiver request will not jeopardize the underlying purpose of this rule, ensuring that capable PSAPs can seek enforcement of CMRS providers' 911 indoor location obligations. Meanwhile, Bristol Bay can conserve limited financial resources in anticipation of the day it will provide location data to a capable recipient, to the benefit of customers and the local public safety community.

CONCLUSION

Participation by state and local authorities is essential for a provider like Bristol Bay to perform its role in facilitating E911 location services. Rural subscribers, visitors and workers in Alaska have few choices for CMRS providers that focus on their unique needs. Careful allocation of energy, time and resources is essential to provision of wireless services. Given the dramatic geography, scarce population and low returns on investment in Bristol Bay's service area, grant of

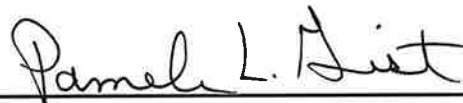
¹² 47 C.F.R. § 20.18(i)(2)(iv).

this Petition will help ensure service in an area where callers might otherwise have no access to wireless network signals at all.

For the foregoing reasons, Bristol Bay respectfully requests grant a temporary waiver of the Section 20.18(i) location collection, delivery and reporting requirements.

Respectfully submitted,

BRISTOL BAY CELLULAR PARTNERSHIP

A handwritten signature in cursive script, reading "Pamela L. Gist", written over a horizontal line.

Pamela L. Gist, Esq.
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Date: March 7, 2017

DECLARATION


I, Tanya Moorcroft, hereby declare under penalty of perjury as follows:

I am Acting General Manager of Bristol Bay Cellular Partnership.

This Declaration is submitted in support of the foregoing Petition for Temporary Waiver.

I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

Executed on 3-7-17



Tanya Moorcroft, Acting General Manager
Bristol Bay Cellular Partnership

CERTIFICATE OF SERVICE

I, Pamela Gist, hereby certify that on this 7th day of March, 2017, copies of the foregoing PETITION FOR TEMPORARY WAIVER were sent by e-mail, in pdf format, to the following:

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A handwritten signature in black ink, reading "Pamela L. Gist", written over a horizontal line.

Pamela Gist